

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of:

Investigation Case Number 05-0017-PHR

MARTA K. BROKSAS, RPh.
Holder of License No. 5879
For the Practice of Pharmacy
In the State of Arizona,

Respondent

**CONSENT AGREEMENT AND ORDER
FOR SUSPENSION, PROBATION AND
DISCIPLINARY FINE**

CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5), MARTA K. BROKSAS, R.Ph., ("Respondent"), holder of pharmacist license number 5879 to practice pharmacy in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that she has a right to a public administrative hearing concerning the above-captioned matter, at which hearing she could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly and voluntarily relinquishes all right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein.

3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

4. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against her.

5. Respondent understands this Consent Agreement deals with Board Investigation

1 Case No. 05-0017-PHR involving allegations of unprofessional conduct against Respondent.

2 The investigation into these allegations against Respondent shall be concluded upon the Board's
3 adoption of this Consent Agreement.

4 6. Respondent understands that this Consent Agreement does not constitute a dismissal or
5 resolution of any other matters which may come before the Board in the future, if any, and does not
6 constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
7 other future investigations, actions or proceedings.

8 7. Respondent also understands that acceptance of this Consent Agreement does not
9 preclude any other agency, subdivision, or officer of this State from instituting any other civil or
10 criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

11 8. Respondent acknowledges and agrees that, upon signing this Consent Agreement and
12 returning this document to the Board's Executive Director, she may not revoke her acceptance
13 of the Consent Agreement or make any modifications to the document regardless of whether the
14 Consent Agreement has been signed by the Executive Director. Any modification to this original
15 document is ineffective and void unless mutually agreed by the parties in writing.

16 9. All admissions made by the Respondent in this Consent Agreement are made solely for
17 the final disposition of this matter, and any related administrative proceedings or civil litigation
18 involving the Board and Respondent. Therefore, any admissions made by Respondent in this Consent
19 Agreement are not intended for any other use, such as in the context of another regulatory agency's
20 proceedings, or civil or criminal proceedings, whether in the State of Arizona or in any other state or
21 federal court.

22 10. Respondent understands that the Consent Agreement shall not become effective unless
23 and until adopted by the Board and signed by its Executive Director.

24 11. If a court of competent jurisdiction rules that any part of this Consent Agreement is void
25 or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and
26 effect.

12. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, she will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

13. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

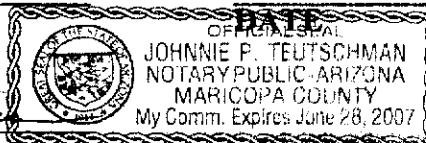
14. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct under A.R.S. § 32-1901.01 (B)(20) ([i]n this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacist, pharmacy intern or graduate intern, "unprofessional conduct" means the following, whether occurring in this state or elsewhere: violated a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its Executive Director pursuant to this chapter), which shall result in disciplinary action under A.R.S. § 32-1927(A)(1).

REVIEWED AND ACCEPTED BY:

Marta K. Broksas
MARTA K. BROKSAS

November 11, 2005

[Signature]
Notary Public



FINDINGS OF FACT

By stipulation of the parties, this Consent Agreement is entered into for final disposition of the matters described herein. Respondent admits that the Board has sufficient and substantial evidence to make the following Findings of Fact :

15. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the State of Arizona.

1 16. The Board possesses jurisdiction over the subject matter and over Respondent as a
2 licensee of the Board, under A.R.S. § 32-1901, *et seq.*

3 17. Respondent is the holder of Pharmacist License No. 5879 which permits her to engage in
4 the practice of pharmacy in the State of Arizona.

5 18. From October 23, 2000 to May16, 2005, Respondent was employed as the
6 pharmacist-in-charge at Bashas' United Drug pharmacy #6 located at 1625 E. Glendale Avenue,
7 Phoenix, Arizona.

8 19. On May 21, 2005, the Board's Executive Director received a Drug Enforcement
9 Administration (DEA) Form 106 (report of theft or loss of Controlled Substances) from Barrett T.
10 Moravec, Pharmacy District Manager for Bashas' United Drug which summarized an investigation
11 concerning diversion of Acetaminophen with Codeine products by Respondent from Bashas' United
12 Drug Pharmacy #6. (**See Exhibit A - Copy of DEA 106 Form**).

13 20. On May 14, 2005, the Board's Executive Director received a facsimile from Bashas'
14 which contained Respondent's admission that she stole medicines from Bashas' United Drug Pharmacy
15 #6 without paying for them and without valid prescriptions (**See Exhibit B – Bashas' United Drug**
16 **Member Conference Memorandum**). Respondent took the following medicines :

- 17 a. 30 packages of 9 Imitrex® 100 mg. tablets (270), a prescription-only drug, a violation of
18 A.R.S. § 32-1968.
- 19 b. 20 bottles of 100 APAP with Codeine 60 mg. tablets (2000), a Class III Controlled
20 Substance, a violation fo A.R.S. § 36-2525.
- 21 c. 16 bottles of 100 APAP with Codeine 30 mg. tablets (1600), a Class III Controlled
22 Substance, a violation of A.R.S. § 36-2525.

23 21. On June 1, 2005, a Board Compliance Officer conducted two audits for APAP with
24 Codeine products at Bashas' United Drugs Pharmacy #6. The audit results disclosed the following :

25 A. The first audit was for the period from June 28, 2004 to May 1, 2005 and the following
26 shortages were determined :

1. APAP 325 mg. with Codeine 30 mg. - 1,670 tablets
2. APAP 325 mg. with Codeine 60 mg. - 2,290 tablets

B. The second audit was for the period from May 1, 2005 to May 16, 2005 and the following shortages were determined :

1. APAP 325 mg. with Codeine 30 mg. - 128 tablets
2. APAP 325 mg. with Codeine 60 mg. - 213 tablets

22. Respondent was the pharmacist-in-charge during the audit periods listed above at Bashas' United Drug Pharmacy #6 as defined in A.R.S. § 32-1901 (59) to wit :

"Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.

CONCLUSIONS OF LAW

23. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the State of Arizona, under A.R.S. § 32-1901 *et seq.*

24. The conduct and circumstances described in paragraphs 17 through 22 above constitute grounds for disciplinary action under A.R.S. § § 32-1927 (A) (10), A.R.S. § 32-1927 (A) (16) and A.R.S. § 32-1927 (B)(2) to wit:

A.R.S. § 32-1927 (A) The license of any pharmacist or pharmacy intern may be revoked or suspended or a pharmacist or pharmacy intern may be placed on probation by the board if :

(10) The licensee is found by the board to be guilty of violating any Arizona or federal law, rule, or regulation relating to the manufacture and distribution of drugs and devices, or the practice of pharmacy.

(16) : The licensee violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of or conspired to violate this chapter.

A.R.S. § 32-1927 (B)(2) The license of any pharmacist or pharmacy intern may be revoked or suspended or the pharmacist or pharmacy intern or graduate intern may be placed on probation or censured and a civil penalty of not more than one thousand dollars (\$1000.00) for each offense may be imposed by the board if the licensee :

1 Is found by the board, or is convicted in a federal or state court, of having
2 violated federal or state laws or administrative rules pertaining to marijuana, prescription-
3 only drugs, narcotics, dangerous drugs or controlled substances.

4 **ORDER**

5 Based upon the above Findings of Fact and Conclusions of Law, and under the authority
6 granted to the Board, under A.R.S. § 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-122 (C),

7 **IT IS HEREBY ORDERED that :**

8 25. (a) Pharmacist License No. 5879, which was issued to Respondent for the practice of
9 pharmacy in the State of Arizona, is hereby placed on **SUSPENSION** for a period of thirty (30) days
10 beginning on the effective date of this Order.

11 (b) Thereafter, Respondent's license shall be placed on **PROBATION** for a period of
12 three (3) years, from the final date of **SUSPENSION**.

13 The **SUSPENSION** and **PROBATION** are subject to the following conditions:

14 26. Respondent shall immediately return her pharmacist license to the Board for the period
15 of **SUSPENSION**.

16 27. Respondent shall not serve as a preceptor pharmacist or pharmacist-in-charge
17 throughout the term of her **SUSPENSION** and **PROBATION**.

18 28. Respondent shall obey all federal and state laws and rules governing the practice of
19 pharmacy.

20 29. Respondent shall furnish the Board with a list of all jurisdictions in which she maintains
21 or has maintained licensure in the profession of pharmacy along with the registration number of said
22 licenses.

23 30. Respondent is required to advise the Board immediately of any change in pharmacy
24 employment status throughout the term of her **PROBATION**.

25 31. Respondent is required to furnish all pharmacy employers with a copy of this Board
26 Order throughout the term of her **PROBATION**.

1 32. Respondent shall pay the Board a disciplinary fine of \$5,000. Respondent shall pay the
2 fine to the Board either by certified or cashier's check, within ninety (90) days of this Order.

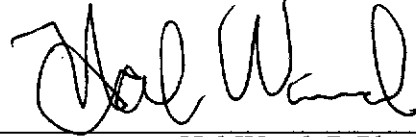
3 33. Respondent shall appear in person before the Board to respond to questions or concerns
4 regarding her compliance with this Order when requested by the Board.

5 34. If Respondent violates this Order in any way or fails to fulfill the requirements of this
6 Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke,
7 suspend or take other disciplinary actions against the Respondent. The issue at such a hearing will be
8 limited solely to whether this Order has been violated.

9 35. Respondent shall appear before the Board at a regularly scheduled Board meeting on or
10 after November 16, 2008 to request that the probation imposed by this Order be terminated.
11 Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

12 **DATED and EFFECTIVE this 16th day of November, 2005**

13 **ARIZONA STATE BOARD OF PHARMACY**

14 

15 _____
16 Hal Wand, R.Ph.
17 Executive Director
18 Arizona State Board of Pharmacy
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1 ORIGINAL of the foregoing, fully executed,
2 filed this 16th day of November 2005, with:

3 Arizona State Board of Pharmacy
4 4425 W. Olive Avenue, #140
5 Glendale, Arizona 85302

6 Copy of the foregoing sent
7 via Certified US mail this 21st day of
8 November, 2005 to:

9 MARTA K. BROKSAS 7000 1676 0006 4393 5386
10 1747 W. Echo Lane
11 Phoenix, AZ 85021

12 and

13 Roger N. Morris, Esq. 7000 1676 0006 4393 5379
14 Quarles & Brady Streich Lang
15 Two N. Central
16 Phoenix, AZ 85004
17 Attorney for Respondent

18 Copy or the foregoing mailed
19 this 21st day of November, 2005 to:

20 Roberto Pulver
21 Assistant Attorney General
22 1275 W. Washington, CIV/LES
23 Phoenix, Arizona 85007
24 Attorney for the State

25 By: Lauren M Hugrave

7000 1670 0006 4393 5379

U.S. Postal Service CERTIFIED MAIL RECEIPT

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Total Postage:

Roger N. Morris, Esq.

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Quarles & Brady Streich Lang LMH

Street, Apt

Two N. Central

City, State

Phoenix, Arizona 85004

11/21/05
mailed
order

PS Form 3800, Mail

See Reverse for Instructions

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Total Postage:

Marta K. Broksas

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1747 W. Echo Lane

Street, Apt

Phoenix, Arizona 85021

City, State

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mailed
order
LMH

PS Form 3800, Mail

See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

NOV 23 2005

3. Service Type
☒ Certified Mail
☐ Registered
☐ Insured Mail
☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number
7000 1670 0006 4393 5386

Domestic Return Receipt

Form 3811, February 2004

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Marta K. Broksas
1747 W. Echo Lane
Phoenix, Arizona 85021

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No

If YES, enter delivery address below:

NOV 28 2005

RECEIVED

DEC - 6 2005

3. Service Type
☒ Certified Mail
☐ Registered
☐ Insured Mail
☐ Express Mail
☐ Return Receipt for Merchandise
☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

Article Number
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